

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

- - - - -x

In the Matter of:

DELPHI CORPORATION, et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

August 26, 2008

10:03 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

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HEARING re Debtors' Motion for an Order Pursuant to Bankruptcy  
Rule 9019 Approving Settlement Among the Debtors, Furukawa  
Electric North America APD and Furukawa Electric Co., Ltd.

Transcribed by: Lisa Bar-Leib

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A P P E A R A N C E S :

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3 Office of the United States Trustee

4 33 Whitehall Street

5 21st Floor

6 New York, NY 10004

7  
8 BY: ANDREW VELEZ-RIVERA, ESQ.

9 (TELEPHONICALLY)

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P R O C E E D I N G S

THE COURT: Okay. Delphi Corporation.

MR. BERGER: Good morning, Judge.

THE COURT: Good morning.

MR. BERGER: Neil Berger, Togut, Segal & Segal for the Delphi debtors. Your Honor, this is the thirty-fourth omnibus hearing for Delphi. A proposed omnibus hearing agenda was filed. There are two matters that appear on the agenda. The first matter has been adjourned to the September 23 omnibus hearing, leaving item number 2, which is the matter handled by my office, debtors' motion for authority to enter into a settlement agreement with Furukawa.

Your Honor, this motion was filed on the docket maintained by the clerk for this court. There's an affidavit of service on file. There are no objections. Your Honor, this is the debtors' motion for authority to enter into a settlement agreement with Furukawa Electric North America APD and Furukawa Electric Co., Ltd. Your Honor has seen the parties before the Court on a number of occasions. But briefly, so there is some context on the record, prior to the petition date, DAS LLC and Furukawa entered into a long term contract pursuant to which Furukawa agreed to provide sensors to the debtor.

Again, prior to the petition date, Delphi filed a breach of contract action against Furukawa in the Michigan state court alleging that Furukawa used an unauthorized metal

1 component in the sensors and Delphi sought damages for that  
2 breach. Furukawa didn't file a counterclaim in the state court  
3 action but did file proof of claim 12347 in this case, seeking  
4 approximately 2.6 million dollars and Furukawa asserted that  
5 even if it had changed the metal component that didn't cause  
6 the sensors to fail. Consequently, Furukawa denied liability  
7 to the debtors. The debtors objected to the claim. They filed  
8 an affirmative claim for relief. There was some motion  
9 practice before Your Honor concerning the scope of the claim  
10 hearing, abstention, relief from the automatic stay. That  
11 motion request was denied. Delphi did file its affirmative  
12 claim, we called it a counterclaim, in this court. Again,  
13 Furukawa responded and denied liability.

14 The parties did go to mediation last month and that  
15 mediation was conducted by William Sangfell (ph.) and the goal  
16 of that mediation was to resolve the debtors' objection to the  
17 proof of claim, the parties' dispute concerning the  
18 counterclaims. Furukawa and Delphi walked away from that  
19 mediation without a deal in hand but certainly with ongoing  
20 negotiations. And the parties did continue negotiations one on  
21 one after the mediation.

22 Separately, prior to the petition date, the debtors  
23 and Furukawa had other business relationships for the provision  
24 of non-sensor goods by Furukawa to the debtors. Furukawa filed  
25 a proof of claim, 10574, for approximately 5.069 million

1 dollars consisting of an unsecured claim of 4.7 million dollars  
2 and a secured claim, a reclamation claim, of approximately  
3 312,000 dollars. Furukawa subsequently transferred a portion  
4 of that claim to Silver Point. Silver Point subsequently  
5 transferred a piece of that claim to Goldman Sachs. The  
6 debtors objected to that proof of claim as well. The debtors  
7 objected to cure claims asserted by Furukawa in connection with  
8 the sale of the steering and halfshaft business. There were a  
9 number of disputes that were ongoing. The parties were engaged  
10 in discovery, formal and informal. I should say that in  
11 connection with the counterclaim, the parties did engage in  
12 extensive discovery. There was document production; there were  
13 depositions of witnesses, Delphi, GM and Furukawa witnesses.  
14 Furukawa had witnesses in from Japan that were deposed in  
15 Atlanta. GM and Delphi witnesses were deposed in Michigan.

16 As I said, negotiations concerning the counterclaim  
17 and the proof of claim continued and did eventually end in a  
18 settlement. Reconciliation and free flow of information  
19 between the parties concerning the elements and cure components  
20 in claim 10574 were ongoing for a number of months with my  
21 office working closely with the debtors. And as a result of  
22 diligence, arm's length negotiations and mediation and ongoing  
23 discussions, the parties negotiated a settlement agreement  
24 that's attached to the motion, the significant portions of  
25 which are not later than three days after an order approving

1 the settlement agreement, presuming Your Honor approves the  
2 agreement, becomes final. Furukawa will pay the debtors 16.5  
3 million dollars. That's a payment to DAS LLC. Claim 12347,  
4 which was filed in the approximate amount of 2.6 million  
5 dollars, will be expunged. Claim 10574 will be reduced by  
6 approximately 194,000 dollars and allowed in the amount of  
7 4,874,679.52 as a general unsecured claim with the exception of  
8 only to the cure portions of that claim which have been agreed  
9 upon and the settlement agreement identifies the cure amounts  
10 purchase order by purchase order.

11 There is an allocation of the allowed amount of claim  
12 10574 between Goldman, SPCP and Furukawa in accordance with the  
13 notice of claim transfers that are filed with the clerk of the  
14 court. Furukawa's response to the debtors' omnibus claim  
15 objections, that was number 3 and 19, are withdrawn.  
16 Furukawa's objections to the cure notices filed by the debtors  
17 in connection with the steering and halfshaft business are  
18 withdrawn. There's no need for the pre-trial conference  
19 scheduled by Your Honor for September 12th concerning the  
20 counterclaim and the answer. That was contained in one of the  
21 discovery stipulations and orders that were entered by Your  
22 Honor.

23 The Michigan state court action that was commenced by  
24 the debtors pre-petition has been discontinued with prejudice  
25 for the parties to bear their own costs and expenses including



1 attorneys' fees. The parties agree to release one another  
2 concerning claim 12347, the counterclaim and the sensors. All  
3 their other rights concerning all of their other business  
4 relationships are preserved.

5 I reviewed the history of these disputes and this  
6 proposed settlement with my client and representatives of the  
7 unsecured creditors' committee week before last and the  
8 creditors' committee has no objection. In the end, Your Honor,  
9 this is the result of some very hard work, some negotiations,  
10 extensive discovery and the exercise of the debtors' business  
11 judgment that provides for the recovery of 16.5 million dollars  
12 to DAS LLC. It includes the elimination of nearly three  
13 million dollars of claims. It avoids the trials here  
14 concerning the liability, damages, contested hearings on the  
15 cure and claim objections and it terminates the state court  
16 action. So in the end, Your Honor, the debtors and, I believe,  
17 with the committee on board, believe that this is a very good  
18 result for the debtors.

19 THE COURT: Okay. One question that I had is that  
20 the sixteen and a half million dollar payment obligations --  
21 just that, right? There's no setoff against that?

22 MR. BERGER: No.

23 THE COURT: Okay.

24 MR. BERGER: We will be wired 16.5 million dollars.

25 THE COURT: Okay. Does anyone have anything to say

1 on this settlement?

2 MR. RIELA: Yes, Your Honor. Michael Riela from  
3 Latham & Watkins on behalf of the official creditors'  
4 committee. Mr. Berger is right. The committee's professionals  
5 spoke about this with the debtors' professionals. We're very  
6 comfortable with the settlement and the committee has no  
7 objection. Thank you.

8 THE COURT: Okay. All right. Well, I'll approve the  
9 settlement in light of there being no objection and also based  
10 on my review. I am somewhat familiar with the issues. And  
11 given the amount of the settlement, in light of the claims  
12 asserted by the debtors against Furukawa and Furukawa's claims  
13 against the debtors, it's, to my mind, reasonable based both on  
14 the merits and on the cost of asserting the claim and  
15 collecting. So I'll approve the settlement.

16 MR. BERGER: Thank you, Judge. I have the settlement  
17 agreement to be so ordered on a disk and the companion claim  
18 stipulation on a disk, if I can approach.

19 THE COURT: That's fine.

20 MR. BERGER: Your Honor, that concludes the omnibus  
21 agenda for today --

22 THE COURT: Okay.

23 MR. BERGER: -- and our business here is finished.

24 THE COURT: All right. So I'll see you and your  
25 colleagues at Skadden and the other parties in September.

1 MR. BERGER: Yes, Judge.

2 THE COURT: Okay.

3 MR. BERGER: Thank you for your time.

4 (Whereupon these proceedings were concluded at 10:12 a.m.)

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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Settlement agreement between the debtors and Furukawa Electric North America APD, Inc. and Furukawa Electric Co., Ltd. approved	10	15

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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LISA BAR-LEIB

Veritext LLC

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Date: September 3, 2008